



XI-NC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(61)

मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	HIGH COURT OF CHHATTISGARH, BILASPUR CRIMINAL APPEAL NO. 89 OF 1998	
	<u>DIVISION BENCH</u>	<u>HON'BLE SHRI L.C. BHADOO, & HON'BLE SHRI DHIRENDRA MISHRA, JJ</u>
	<u>APPELLANTS</u>	1. Vishram, S/o Hirasingh Bhareva, R/o Gaddogi, P.S. Aoundhi, District Rajnandgaon. 2. Yadavram, S/o Gangaram, Batkar (Bhareva), R/o Doundi, P.S. Bedegaon, District Gadchirouli (Maharashtra)
	<u>RESPONDENT</u> :	<u>Versus</u> State of Madhya Pradesh, Through : P.S.-Aoundi, District Rajnandgaon
Present	Mrs. Savita Tiwari, counsel for the accused/appellants. Mr. Ashish Shukla, Additional Public Prosecutor for the State/respondent.	
	<u>ORAL JUDGMENT</u> (16th July 2007)	
	<u>Per L.C. Bhadoo, J</u> This appeal is directed against the judgment of conviction and order of sentence dated 4 th December 1997 passed by II Additional Sessions Judge, Rajnandgaon (M.P.) in Sessions Trial No. 99/96 whereby the learned Additional Sessions Judge after	

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	holding the accused/appellants guilty for commission of the offence under Section 302/34 of the IPC, sentenced each of the accused to undergo imprisonment for life and to pay a fine of Rs. 2,000/-, in default of payment of fine to further undergo one year's R.I. Each of them has also been convicted for commission of the offence under Section 201 of the IPC and sentenced to undergo R.I. for three years. 2. Case of the prosecution, in brief, is that on 7.7.1995 Hirasingh (since deceased) was sitting in a hut in his agriculture field. There was some quarrel between accused Vishram and his father Hirasingh prior to the incident, therefore, Vishram along with his brother-in-law Yadavram committed murder of Hirasingh by attacking him with knife and axe on his neck. After committing the murder of Hirasingh, accused/appellants Vishram and Yadavram in order to screen themselves from the legal punishment for commission of murder, dragged the dead body of Hirasingh from the hut towards the forest and after digging a pit buried the dead body. Fattesingh (PW-3) and Gannuram (PW-2) witnessed the accused/appellants committing the murder of Hirasingh and dragging the dead body towards the forest. Gannuram informed his brother Mannulal (PW-1) about the incident and in turn, Mannulal informed Sarpanch Biharilal (PW-8) and other persons. Thereafter, enquiry was also made from Fattesingh and when he confirmed the witnessing of incident, on being asked by the	

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	villagers from accused Vishram about his father Hirasingh, accused Vishram made extra judicial confession before the villagers that he along with his brother-in-law Yadavram have committed murder of his father Hirasingh with knife and axe and the dead body has been buried in the forest. Mannulal gave merg intimation (Ex.P/12) and based on that, First Information Report (Ex.P/1) was registered. While in police custody, accused Vishram gave memorandum (Ex.P/3), pursuant to which the weapon of offence axe was seized under Ex.P/2 & one spade was seized under Ex.P/4. Bloodstained soil, plain soil and bloodstained knife were recovered under Ex.P/5. One bloodstained lungi and one bloodstained baniyan were seized under Ex.P/6 from accused Vishram. After giving notice (Ex.P/9) to the Panchas, inquest (Ex.P/8) was prepared on the dead body of Hirasingh. Site plan (Ex.P/10) was prepared by Patwari Halka. Dead body of Hirasingh was sent for postmortem examination to Primary Health Center, Manpur under Ex.P/15-A where Dr. M. Choudhary (PW-11) conducted postmortem and prepared the postmortem report (Ex.P/17), in which he opined that the cause of death is haemorrhage (circulatory failure) due to cutting of left common carotid artery, left sublabium artery and veins cut of first cervical vertebra and the death was homicidal. The seized articles were sent to Forensic Science Laboratory, Raipur from where the report (Ex.P/20) was received. After completion of investigation, the	

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	charge sheet was filed in the Court of Judicial Magistrate First Class, Ambagarh Chowki who in turn committed the case to the Sessions Judge, Rajnandgaon from where learned Additional Sessions Judge received the case on transfer for trial. 3. Prosecution examined 13 witnesses at the trial in order to establish the charge against the accused persons. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the material appearing against them in the prosecution evidence and stated that they are innocent and they have been falsely implicated in the crime on account of enmity. 4. Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentence the accused/appellants as aforementioned. 5. We have heard Mrs. Savita Tiwari, learned counsel appearing for the accused/appellants and Mr. Ashish Shukla, learned Additional Public Prosecutor for the State/respondent. 6. At the outset, Mrs. Tiwari, has not disputed homicidal death of Hirasingh. Moreover, Dr. M. Choudhary (PW-11) has stated that on 9.7.1995 he conducted postmortem on the dead body of Hirasingh and noticed that the trachea was cut from left to back side, there was a lacerated wound on the back side of the neck in	

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	the size of 3" in length & 3" deep, there was an incised wound in the size of 4" in length 2 ½" deep on the right side of the neck, the cervical vertebra was cut completely and cause of death was haemorrhage (circulatory failure) due to cutting of left common carotid artery, left sublabium artery and veins cut of first cervical vertebra and the death was homicidal. His report is Ex. P/17. The above medical evidence is corroborated by the evidence of PW-4 Karamsai, PW-5 Maniram, PW-6 Baraturam, PW-7 Mainuram and PW-8 Bihrailal before whom the accused Vishram made extra judicial confession regarding commission of murder of Hirasingh i.e. his father. Therefore, in view of above medical and ocular evidence, it is established that the death of Hirasingh was homicidal in nature. 7. As far as involvement of the accused/appellants in crime in question is concerned, PW-2 Gannuram has stated that on the fateful day at about 12.00 noon Hirasingh was in his hut, Fattesingh came from the forest side, he saw accused Vishram and Yadavram dragging the dead body of Hirasingh towards forest. Before the dead body was dragged, he had heard the cries "save, save", he did not witness the <i>Marpeet</i>. He did not see any incident before the death of Hirasingh. In the cross-examination this witness has stated that he saw Vishram while dragging the dead body from a distance of 40 feet, he only saw the backside of Vishram. He saw only Vishram dragging the dead body and did	

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	not see any other incident. PW-3 Fattesingh has also corroborated the above evidence and stated that he saw Vishram and Yadavram while dragging the dead body of Hirasingh towards forest. In the cross-examination he has admitted that on the date of incident he did not see Hirasingh, Vishram and Yadavram together, he saw Vishram dragging the dead body of someone from a distance of 500 feet. He saw backside of the person who was dragging the dead body and did not see his front side. From close scrutiny of the evidence of these two witnesses it is established that they saw the accused Vishram while dragging deceased Hirasingh towards forest. As far as accused Yadavram is concerned, there is no cogent and clear legal evidence to establish that in fact, these witnesses i.e. PW-2 Gannuram & PW-3 Fattesingh, also witnessed accused Yadavram while dragging the dead body of Hirasingh. 8. So far as evidence of PW-4 Karamsai, PW-5 Maniram, PW-6 Baraturam and PW-7 Mainuram is concerned, they have stated that in the Panchayat accused Vishram made extra judicial confession to the effect that he committed murder of his father Hirasingh by attacking him with knife and axe. These witnesses have not stated in so many clear words that accused Vishram while making extra judicial confession also stated that Yadavram had also attacked Hirasingh and committed his murder. PW-8 Biharilal, Sarpanch of the village, has stated that when enquiries were made from accused Vishram, he stated that he along with	

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	Yadavram have committed the murder of Hirasingh with knife and axe and the dead body has been buried in the forest area. Vishram also disclosed about the place where the weapon of offence axe was hidden and dead body was buried and memorandum Ex.P/3 bears his signature. Thereafter, the dead body of Hirasingh was exhumed after digging the pit and the same was seized under Ex.P/14. Accused Vishram said that because his father used to commit <i>Marpeet</i> with him that is why he committed his murder. In the cross-examination he has stated that he saw Vishram only on the spot and not Yadavram. He further stated that he neither made any enquiry from accused Vishram nor did Vishram disclose anything to him. Therefore, it is evident from above that except this witnesses other witnesses have stated that Vishram made extra judicial confession in respect of himself and they have not categorically stated that accused Vishram disclosed that Yadavram also participated in commission of the crime. Since in the extrajudicial confession made by accused Vishram before PW-4 Karamsai, PW-5 Maniram, PW-6 Baraturam and PW-7 Mainuram, he has not categorically stated that accused Yadavram also participated in committing the murder of Hirasingh and that other witnesses have not corroborated the evidence of Biharilal regarding the fact that the accused Vishram along with accused Yadavram committed the murder of Hirasingh, no explicit reliance can be placed on the evidence of these	

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	witnesses in respect of accused Yadavram. Moreover, there is no other evidence which corroborates the extra judicial confession made by accused Vishram in respect of accused Yadavram that he was a party to commission of the crime in question and without any corroboration to the fact that accused Yadavram also actively participated in the crime in question, in the facts and circumstances of the case merely on the basis of extra judicial confession made by accomplice Vishram, accused Yadavram cannot be held guilty. 9. Apart from the fact that accused Vishram made extra judicial confession before the above witnesses regarding commission of the crime, he was also seen by PW-2 Gannuram, and PW-3 Fattesingh while dragging the dead body of Hirasingh towards forest, the weapon of offence axe was recovered at his instance and the dead body was also exhumed at his instance, therefore, from the above circumstantial evidence it is established beyond reasonable doubt that accused Vishram was author of the crime in question i.e. committing the murder of Hirasingh. However, accused Vishram has been convicted by the trial Court under Section 302/34 of the IPC but from the evidence available on record, we are of the considered opinion that the prosecution has been able to establish that accused Vishram was the person responsible for causing death of his father Hirasingh and as such, he can be held guilty under Section 302 of the IPC independently.	

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	However, based on the evidence of above witnesses, accused Vishram has rightly been convicted under Section 201 of the IPC as he was seen by PW-2 Garnuram and PW-3 Fattesingh while dragging the dead body of deceased towards forest and at his instance the dead body was exhumed from the forest after digging the pit where it was buried. Therefore, we do not find any illegality or infirmity in the judgment of the trial Court whereby accused Vishram has been convicted under Sections 302 & 201 of the IPC and sentenced accordingly. 10. In the result, the appeal of accused/appellant Vishram fails, the same is liable to be dismissed and is hereby dismissed. He shall serve out the remaining sentence imposed upon him by the trial Court. However, the appeal of accused/appellant Yadavram succeeds, his conviction under Section 302/34 & 201 of the IPC and sentence imposed thereon, are set aside. He is acquitted of the above charges. It is stated that he is in detention since 10.7.1995, therefore, he be set at liberty forthwith if not required in any other case. Sd/- L.C. Bhadoo Judge	Sd/- DHIRENDRA MISHRA Judge

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